Portland Urban Migratory Bird Treaty Program Partners
c/o Steve Berliner, 10824 SE Oak St., #311, Milwaukie, OR 97222

April 16, 2007

Mr. Louis Peraertz, Esq.
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re. Comments on WT Docket No. 03-187, FCC 06-164
Effect of Communications Towers on Migratory Birds

Dear Mr. Peraertz:

We are submitting comments on the Notice of Proposed Rulemaking for WT Docket No. 03-187, FCC 06-164 "Effect of Communications Towers on Migratory Birds," published in the *Federal Register* on November 22, 2006 (volume 71[225]:67510-67518). These comments represent and have been approved by the organizations and agencies listed below. Each has made a commitment to help conserve migratory birds through their work in the greater Portland, Oregon metropolitan region, and each is a signatory partner to the City of Portland and U.S. Fish and Wildlife Service's "Urban Conservation Treaty for Migratory Birds" program:

Mayor Tom Potter, City of Portland; -Patrick C. Willis, Wildlife Preserve Administrator; -Mike Houck, Urban Greenspaces Institute; -Brian Wegener, Tualatin Riverkeepers; -USDA Forest Service, Region Six; -Friends of Forest Park; -Bob Sallinger, Audubon Society of Portland; -Christine Steele, Johnson Creek Watershed Council; -Scott Fogarty, Friends of Trees; -James L. Davis, Educator and author; -Maureen E. Hosty, 4-H Wildlife Steward; -Rachel Felice, Columbia Slough Watershed Council; -Friends of Oaks Bottom Wetlands; -Steve Berliner, Friends of Kellogg & Mt. Scott Creeks Watershed

Portland is one of seven participating cities selected to pilot the national Urban Conservation Treaty for Migratory Birds program. The program was initiated because birds are of great importance to citizens, they face significant challenges, and there are many ways people can work together to help conserve them. Reducing bird hazards is one of our major project focal areas. As you know, accounts and studies of migratory bird mortality from collisions with communications towers firmly indicate that anywhere from tens of thousands to millions of birds are killed in these collisions each year in the United States alone. Therefore, we strongly support all of the measures proposed by the Federal Communications Commission (FCC) to reduce migratory bird collisions with communications towers.

Specific comments and recommendations

National Environmental Policy Act

We agree with the FCC's tentative conclusion that the National Environmental Policy Act (NEPA) does apply to the issue of communications towers' impacts/effects on birds, because of the public interest in birds, and the many effects and benefits birds have on the human environment as defined by NEPA. Therefore, NEPA review of all proposed towers should include an assessment of potential migratory bird impacts.

Migratory Bird Treaty Act

We support the following findings of the U.S. Fish and Wildlife Service (USFWS), as stated in their comment letter regarding the FCC's new proposed rule:

"The Migratory Bird Treaty Act prohibits the taking, killing, possession, transportation, and importation of migratory birds... except when specifically authorized by the Department of the Interior." "By rulemaking, the Commission can establish regulations designed to minimize "take" of migratory birds." "In the Service's view, the Commission has the authority (ref. Executive Order 13186) to draft regulations that minimize "take" of migratory birds."

As you know, the USFWS comments within this Docket cite a growing number of individual studies confirming the adverse impacts of towers on birds. One study documents 500 songbirds killed over a 3-night period at West Monroe, NY, in October 2005 (Evans 1998[1]). Another study recorded 400 birds killed during two non-consecutive nights in September, 2005 at the 1,100-foot WMTV tower near Madison, WI (Ugoretz 2005[2]). Even more alarming is a study that documented a "single-night tower strike" event that resulted in the deaths of more than 12,000 birds in Eau Clair, WI in 1963 (Kemper 1996[3]).

Communication tower design and siting solutions in the FCC's proposed rule

We recommend that the FCC adopt all of the measures in the proposed rule in accordance with the specific USFWS recommendations regarding the measures, summarized as follows:

- In its recommendations, the FCC has recognized that evidence over a long period of time suggests that steady burning tower lighting is more attractive to birds, and has resulted in more collisions than have been correlated with strobe or flashing lights. We support a change in FCC Rules requiring the use of *mimimum intensity* white strobe lights for FAA Pilot warning devices, along with the use of shielding of the lights to minimize impacts on local residents within view of them.
- We would like to see FCC recommend further testing by the FAA of both lower intensity lights (below 2,000cd), as well as slower flashing to give more "off" time (20 flashes per minute with 3 seconds between flashes). It is important that further testing be conducted to determine which type(s) of lighting are least attractive to birds while still maintaining aircraft safety.
- Where local zoning codes prohibit the use of white strobe lighting, we support the conditional allowance of red flashing or strobe lighting.
- We recommend monopole or lattice-design towers less than 200 ft AGL in height whenever possible (no guy wires).

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[1] Evans, W. 1998. Two to four million birds a year: calculating avian mortality at communication towers. Bird Calls, American Bird Conservancy, March 1998: 1 p.

[2] S. Ugoretz, wildlife biologist, Wisconsin Dept. Natural Resources 2005 pers. comm. as cited in USFWS letter.

[3] Kemper, C.A. 1996. A study of bird mortality at a west central Wisconsin TV tower from 1957-1995. The Passenger Pigeon 58(3):219-235.

- We recommend bird deterrent devices on tower guy wires (both pre-existing and when guy wires are allowed on new structures) due to the importance to Whooping Cranes, among other species.
- We support requiring applicants to locate towers away from important bird habitats where possible.
- Airspace monitoring should precede the review and permitting process over a 3-year period, and the data should be used in the NEPA analysis.
- We support requiring a variety of studies for siting, commensurate with native habitat conditions, keeping in mind that there are also important habitat areas within urban boundaries. We would like to see the FCC establish USFWS consultation involvement with applications.
- We support the provision of FCC-required post-construction monitoring and reporting of bird mortality to the USFWS for at least three years.
- We support the FCC's proposed measures to require alteration or replacement of tower or tower facilities to incorporate lighting upgrades to meet current standards by formulating rules that establish a variety of opportunities or "triggers" that would require previously licensed towers to be retrofitted to the more "bird-friendly" lighting standards.

Additional recommended measures

We support all USFWS recommendations included in their September 14, 2000 guidance on Siting, Construction, Operation and Decommissioning of Communications Towers, and want to stress the importance of ongoing research which requires cooperation and compliance from tower owners and operators. Item no.11 of the recommendations addresses this issue, although we did not see a related measure included in the FCC's proposed rule. It will only be through the diligent study and monitoring of tower impacts on birds that we will be able to further minimize the loss of neotropical and other migratory birds due to communications towers. Therefore, we recommend that the FCC add the following:

- If a tower is constructed or proposed for construction, Service personnel or researchers from the Communication Tower Working Group should be allowed access to the site to evaluate bird use, conduct dead-bird searches, to place net catchments below the towers but above the ground, and to place radar, Global Positioning System, infrared, thermal imagery, and acoustical monitoring equipment as necessary to assess and verify bird movements and to gain information on the impacts of various tower sizes, configurations, and lighting systems."

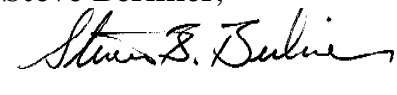
In addition, evidence suggests that birds are not only attracted by high altitude lighting but by ground-based and building and security lighting as well. Therefore, we recommend that the FCC add a measure to establish lighting standards for all aspects of facilities at tower locations to prevent attracting migrating birds that could be killed once in the proximity of the towers and tower guy wires. Shielding could be required on such lights so that buildings and the ground are illuminated as needed, but birds would not see the lights, or would see only diffuse light.

Conclusion

Each of the above-listed Urban Conservation Treaty for Migratory Birds partners of Portland, Oregon want to thank the FCC for proposing new measures to reduce migratory

bird collisions with communication towers, conducting this important resource conservation request for public comment process, and for giving us the opportunity to have a positive impact on migratory bird conservation.

Respectfully submitted,
Steve Berliner,



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